

REMARKS

This Response is submitted in reply to the Office Action mailed on October 22, 2009. Claims 1-47 are currently pending. Previously, Applicant provisionally elected Group III (Claims 10-32, 34-35, 38-40 and 45-47) directed to the nutritional or pharmaceutical composition, with traverse, subject to the Rejoinder provisions of MPEP 821.04. Applicant expressly reserves the right to file one or more divisional applications directed to the non-elected claims.

The Office Action includes a revision of the election of species requirement. In this regard, the Patent Office states that the patent application includes a number of patentably distinct species. Specifically, Applicant is required to elect a single disclosed species of a γ -glutamyl-peptide; a disease or condition; calcium source; an energy source; a nutritionally acceptable component, and an Allium.

Applicant does not believe this election of species requirement is proper and traverses same. First, Applicant believes it would unduly limit Applicant's invention to make the election to specific species of each component. Moreover, Applicant respectfully submits that searching the additional components will not place an undue burden on the Patent Office. For example, the classes to be searched would likely be the same or at least overlap for each of the species of each genus. The prior art for one species will likely be applicable to the other species in the same genus as well.

Moreover, the Patent Office needs to find only a single species or a single component in the case of the Markush group for the claim to be anticipated. The Patent Office does not need to find every possible species of each genus or component.

Finally, Applicant does not believe that this election of species will reduce the burden of examination to the Patent Office. Instead, Applicant will be required to file individual applications directed to the multitude of the claimed species, which will only result in the Patent Office receiving an overload of additional applications directed to subject matter that could have easily been searched or handled in the presently pending application.

In the spirit of cooperation, Applicant respectfully elects the species for each of the genres/components as follows:

γ -glutamyl-alkyl-cysteine sulfoxide as the γ -glutamyl-peptide;
osteoporosis as the disease;

calcium chloride as the calcium source;
carbohydrate as the energy source and maltodextrins as the carbohydrate;
vitamins as the nutritionally acceptable component and Vitamin D as the vitamin; and
Allium cepa as the Allium.

The Director is authorized to charge any additional fees that may be required, or to credit any overpayment to Deposit Account No. 50-4498 in the name of Nestle Nutrition.

Respectfully submitted,

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